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FCC Mail Room

Appeal of USAC Administrator's Decision on Appeal – Funding Year 2010-2011

8/4/2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 96-45 and 02-6 Request for Review
Applicant: Mohave County Library District
Billed Entity Number: 143212
Service Provider Identification Number: 143002468
Form 470 Application Number: 389180000788994
Form 471 Application Number: 729784
Re: FRN's 1975283,
1975333,1975356,1975395,1975413,1975432,1975445,1975473,1975523,1975536
Funding Commitment Decision Explanation: The dollars requested were reduced to
Remove unposted Internet Access service.

I am appealing the USAC decision to deny my appeal. I am including my appeal letter to them and their denial letter. I do not dispute their denial based on the rules. A mistake was made on my part by not checking the box for Internet Connections on Form 470. This is the 13th year we have applied for e-rate reimbursements and we never checked that box before because I was led to believe that since DSL was bundled in with our regular phone bills it all fell under Telecommunications. The RFP was out there for the required amount of time and did include the internet connections information but the box was not checked which I have since learned meant that some providers would not look at our RFP thinking it did not pertain to services they might provide.

I understand that rules have to be in place and enforced to prevent organizations from wrongfully taking government money. In this case due to a simple mistake our patrons will suffer a loss in services because of approx. \$8000 worth of reimbursements we will not receive unless you intervene. Had the box been checked I have no doubt that the funds would have been allocated. I turned in Form 471 in January and the USAC processed it at the end of March. When they pointed out the mistake I was told to post a new Form 470 and agree to the reduction of funds allocated and after the revised Form 471 was approved to then appeal the decision. I posted the new Form 470 in early April. I have since been told that the Form 471 filing window closed February 19th and therefore my revised Form 470 was a waste of effort.

We basically have two choices in this part of the country for internet connectivity: DSL through the phone company or cable from the cable TV company. Cable did not have sufficient speeds available for our needs so we chose DSL. We have an informal contract

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with the phone company which automatically renews every two years which provides us a monthly discount on DSL which is a part of our regular phone bill.

While a mistake was made on the original paperwork there was no intent to cheat or be unfair to any potential service providers and as I mentioned before had the box been checked I do not believe any of this would be necessary. Therefore, for the sake of our patrons who count on our libraries to provide services that help them in many aspects of their lives I would ask you to reconsider this decision not based strictly on the rules but on the fact that no one was trying to cheat the system, a simple mistake was made, and we are merely trying to provide the best service we can to our patrons.

Sincerely,

Michael D. Massie
Library Specialist
Mohave County Library District
PO Box 7000
3269 N Burbank St
Kingman AZ 86402-7000
(928) 692-5710
(928) 692-5788 (fax)
mike.massie@co.mohave.az.us



Robert Shupe
Library Director

Appeal of Funding Commitment Decision Letter for Funding Year 2010

Applicant: Mohave County Library District

Billed Entity Number: 143212

Service Provider Identification Number: 143002468

Form 471 Application Number: 729784

Re: FRN's 1975283,

1975333,1975356,1975395,1975413,1975432,1975445,1975473,1975523,1975536

Funding Commitment Decision Explanation: The dollars requested were reduced to remove unposted Internet Access service.

I am appealing this decision. I was told I had to resubmit Form 471 eliminating all charges for DSL since they are considered Internet Access and I did not check the box on Form 470 indicating that. I did this and the corrected FRNs were accepted. I also was told to submit another Form 470 indicating the desire for internet access. The receipt notification letter was dated 4/8/10.

I was told that by not checking the Internet Access box on Form 470 vendors who supply internet access would not look at my RFP and therefore it was unfair to them. I understand this now but the RFP with requested internet access was available during the required time and also during the two months since the new Form 470 was submitted and I have yet to be contacted by anybody regarding this service. Not checking the box was done out of ignorance since in the previous years (this being our 13th year for e-rate) it was not checked and there did not seem to be any problem as our requests were all approved.

In reality, in this part of the country there are pretty much two choices: DSL through the phone company and cable through the cable TV company. The Library looked at cable but they do not provide the speeds we were interested in. We have been using DSL from Frontier for many years. We have an informal contract (I do not believe we signed anything) that is renewed automatically every two years giving us a discount. It is a part of our regular phone bill so I was under the impression that it was considered telecommunications and was also marked as tariffed or month-to-month as opposed to a contract.

The DSL is used for our patrons to have internet access on the computers set aside for their use and also for our smaller Community Libraries to access our Integrated Library System. By losing the approx. \$8000 in DSL reimbursements you are not just penalizing the Library District but our patrons who will experience a loss of service because we will have less money to work with for providing services.

I understand and accept the fact that this was my mistake but I do not believe in this case that any unfair practice took place, certainly not intentionally. I cannot believe that you would penalize our patrons because a box was not checked on a form, but I can assure you it will be on next year's form. I would ask you to please reconsider this decision as

no one was trying to cheat the system and our patrons should not have to pay the penalty for my mistake.

Sincerely,

Michael D. Massie
Library Specialist
Mohave County Library District
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3269 N Burbank St
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Robert Shupe
Library Director

7/1/10

cc: Jessica Matushek
Citizens Utilities Rural Tel Co
100 CTE Drive
Dallas PA 18612
(570) 631-5003



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2010-2011

July 28, 2010

Michael D. Massie
Mohave County Library District
3269 N. Burbank St.
P.O. Box 7000
Kingman, AZ 86402-7000

Re: Applicant Name: MOHAVE COUNTY LIBRARY DISTRICT
Billed Entity Number: 143212
Form 471 Application Number: 729784
Funding Request Number(s): 1975283, 1975333, 1975356, 1975395, 1975413,
1975432, 1975445, 1975473, 1975523, 1975536
Your Correspondence Received: July 06, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2010 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1975283, 1975333, 1975356, 1975395, 1975413,
1975432, 1975445, 1975473, 1975523, 1975536

Decision on Appeal: **Denied**

Explanation:

- Upon thorough review of the appeal letter and the relevant documentation, USAC has determined that the services being requested on Block 5 (Items 11) of the Form 471 application are Telecommunications and Internet Access services. The Funding Year 2010 Form 470 Application Number 389180000788994 did not post for the Internet Access service category, which is a violation of the 28 days competitive bidding requirements of this support mechanism. On March 29, 2010, Program Integrity Assurance (PIA) contacted you and you aware of the program violation. You were requested to verify if the referenced Form 470 was the establishing Form 470 for these services. Additionally, you were given an

opportunity to cite an alternate Form 470 in order to cure the program's violation. You were also given the opportunity to modify the current Form 471 Block 5 FRN information to remove the ineligible un-posted Business Class High-Speed-Static IP/DSL Internet Access charges. In your March 29, 2010 and March 30, 2010 responses, you stated that the Form 470 establishing the bidding requirement for the requested services is Form 470 application number 389180000788994. As this information was the same as the original input, the program violation was not cured. Based on the information provided by you, the Internet Access charges were removed. In your March 29, 2010 and March 30, 2010, you also stated that you would be posting a Form 470 for Internet Access then appealing. On appeal, you confirm that you filed a Form 470 for Internet Access after notification by PIA and you received a receipt notification letter dated April 8, 2010. The Funding Year 2010 Form 471 filing window closed February 19, 2010. Therefore, a Form 470 filed in March 2010 would not have established the requested Internet Access Services. You have failed to provide any evidence that USAC erred in its initial determination or that the applicant is in compliance with the Schools and Libraries support mechanism 28 days competitive bidding requirements. Consequently, your appeal is denied.

- FCC rules require that all products and services for which an applicant requests discounts on an FCC Form 471 must be competitively bid on an FCC Form 470. The FCC Form 470 must include a complete description of the services for which discounts are sought, be posted on the website for 28 days, and applicants must carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting an FCC Form 471. *See* 47 C.F.R. secs. 54.504(a)-(c), 54.511(a) and (c). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul. 10, 1997). The only exceptions to the posting requirement are for: (1) contracts signed on or before July 10, 1997 for the life of the contract; and (2) contracts signed between July 10, 1997 and before January 30, 1998 (the date on which the website became operational) for products and/or services provided through June 30, 1999. *See* 47 C.F.R. secs. 54.511(c) and (d).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Schools & Libraries – Competitive Bidding Process

The competitive bidding process begins when an applicant posts the Form 470 to the USAC website and/or issues an RFP. The applicant must then wait 28 days after the Form 470 is posted or an RFP is issued (whichever is later) before selecting a service provider, ordering services and/or executing a contract.

Conduct an open, fair competitive bidding process

- “Open” means that there are no secrets in the process and that all bidders have equal access to the same information.
- “Fair” means that all bidders are treated the same and that no bidder has privileged knowledge over the contents of the Request for Proposal (RFP) or the Form 470.

Service provider involvement in the competitive bidding process

- Service provider involvement in the preparation or certification of the Form 470 or the vendor selection can taint the competitive bidding process and result in denials.
- Applicants cannot turn over their responsibility for ensuring a fair and open competitive bidding process to a service provider or a consultant acting on behalf of a service provider. Only applicants or authorized representatives can prepare, sign and submit (i.e., post to the website or file on paper) the Form 470 and certification.
- Listing a service provider representative as the Form 470 contact person and allowing the same service provider to participate in the competitive bidding process is a violation of FCC rules and will result in denial of funding.
- Service providers who bid on services must not participate in the evaluation process.

Select the winning bid

- Price of the eligible products and services must be the primary factor under consideration when evaluating bids. It does not have to be the sole factor. Examples of relevant factors include: prior experience, personnel qualifications, management capability, environmental objectives, and the cost of ineligible goods and services.
- The selected bid must be cost-effective in comparison to prices available commercially. If you receive only one bid, it is not necessarily cost-effective.

Retain all documents for a period of five years from the last date of service

- This includes:
 - Request For Proposal (RFP), with evidence of publication date
 - Bid evaluation matrix, criteria and weighting
 - Bid evaluation worksheets
 - All written correspondence with the service providers
 - All bids submitted, both winning and losing
 - Other documentation related to service provider selection

For additional information, please use the USAC resources listed below:

28 Day Waiting Period:	http://www.usac.org/sl/applicants/step04/28-day-waiting-period.aspx
Competitive Process:	http://www.usac.org/sl/applicants/step03/
Open & Fair Bidding:	http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx
Selecting Service Provider:	http://www.usac.org/sl/applicants/step04/